

Senate Study Bill 3160 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON MCCOY)

A BILL FOR

1 An Act relating to security interests in farm products,
2 providing for fees and their expenditure, and including
3 contingent applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 554.9102, subsection 4, Code 2011, is
2 amended by striking the subsection.

3 Sec. 2. Section 554.9302, Code 2011, is amended to read as
4 follows:

5 **554.9302 Law governing perfection and priority of**
6 **agricultural liens.**

7 1. While farm products are located in a jurisdiction,
8 the local law of that jurisdiction governs perfection, the
9 effect of perfection or nonperfection, and the priority of an
10 agricultural lien on the farm products.

11 2. Subsection 1 does not apply to buyers of farm products as
12 provided in chapter 554E.

13 Sec. 3. NEW SECTION. **554E.1 Definitions.**

14 As used in this chapter, unless the context otherwise
15 requires:

16 1. "*Buyer*" means a person who, in the ordinary course of
17 business, buys farm products from a person engaged in farming
18 operations who is in the business of selling farm products. A
19 buyer includes a commission merchant and selling agent.

20 2. "*Central filing system*" means a system for filing
21 effective financing statements, and statements amending,
22 continuing, or terminating effective financing statements as
23 provided in section 554E.4.

24 3. "*Commission merchant*" means a person engaged in the
25 business of receiving any farm product for sale, on commission,
26 or for or on behalf of another person.

27 4. "*Crop year*" means the calendar year in which a crop is or
28 will be harvested, animals are born or acquired, or poultry or
29 eggs are or will be sold.

30 5. "*Effective financing statement*" means a financing
31 statement required to be filed as part of the central filing
32 system as provided in section 554E.6.

33 6. "*Knows*" means having actual knowledge. "*Knowledge*" means
34 actual knowledge.

35 7. "*Secretary*" means the secretary of state.

1 8. "*Security interest*" means an interest in farm products
2 that secures payment or performance of an obligation in the
3 same manner as provided in chapter 554.

4 9. "*Selling agent*" means a person, other than a commission
5 merchant, who is engaged in the business of negotiating the
6 sale and purchase of a farm product on behalf of a person
7 engaged in farming operations.

8 10. "*Signature*" means to sign, execute, or otherwise adopt a
9 symbol, or encrypt or similarly process a record in whole or in
10 part, with the present intent of authenticating for purposes of
11 identifying the person and adopting or accepting a record.

12 Sec. 4. NEW SECTION. 554E.2 **Special definitions.**

13 To every extent consistent with the application of federal
14 law, unless the context otherwise requires:

15 1. "*Agricultural lien*" means the same as defined in section
16 554.9102.

17 2. "*Debtor*" means a debtor as defined in section 554.9102
18 who has an interest other than a security interest or lien in a
19 farm product, or any other person who owns a farm product and
20 subjects it to a security interest whether or not that person
21 owes a debt to the secured party.

22 3. "*Farm products*" means the same as defined in section
23 554.9102.

24 4. "*Farming operation*" means the same as defined in section
25 554.9102.

26 5. "*Secured party*" means a secured party as defined in
27 section 554.9102 in whose favor a security interest in farm
28 products is created.

29 6. "*Security interest*" means an interest in farm products
30 that secures payment or performance of an obligation in the
31 same manner as provided in chapter 554.

32 Sec. 5. NEW SECTION. 554E.3 **Uniform commercial code.**

33 This chapter shall be interpreted in conjunction with
34 chapter 554, and terms and phrases used in this chapter shall,
35 to every extent practicable, be interpreted consistently with

1 chapter 554, article 9.

2 Sec. 6. NEW SECTION. 554E.4 Central filing system —
3 establishment and certification.

4 The secretary of state shall establish and administer a
5 central filing system for filing effective financing statements
6 or statements amending, continuing, or terminating effective
7 financing statements on a statewide basis.

8 1. The central filing system shall provide for the
9 electronic filing and examining of effective financing
10 statements, or statements amending, continuing, or terminating
11 effective financing statements.

12 2. The central filing system shall be designed to allow
13 persons to file and examine these documents using the internet.
14 The secretary may provide for the filing and examining of the
15 documents in a paper format.

16 3. The central financing system must comply with the
17 requirements set forth in 7 U.S.C. § 1631 which has been
18 certified by the United States secretary of agriculture prior
19 to implementation.

20 Sec. 7. NEW SECTION. 554E.5 Effective financing statements
21 — filing requirements.

22 The secretary of state shall provide for filing effective
23 financing statements, and statements amending, continuing, or
24 terminating effective financing statements, as provided in this
25 section. The secretary shall prescribe all forms to be used
26 for filing. Presentation for filing of a statement and the
27 acceptance of the statement by the secretary constitutes filing
28 under this section.

29 1. An effective financing statement shall be valid if it
30 substantially complies with the requirements of this section
31 even though it contains minor errors that are not seriously
32 misleading.

33 2. An effective financing statement must be an original or
34 reproduced copy which is signed by the secured party and the
35 debtor. If filed electronically, the debtor is not required to

1 sign the effective financing statement. The statement must be
2 filed with the secretary by the secured party. The secretary
3 shall record the date and hour of the filing of the effective
4 financing statement. The statement must contain information
5 that the secretary requires to comply with 7 U.S.C. § 1631 or
6 to administer this section.

7 3. An effective financing statement must contain all of the
8 following:

- 9 a. The name and address of the secured party.
10 b. The name and address of the debtor.
11 c. The social security number of the debtor or, in the case
12 of a debtor doing business other than as an individual, the
13 internal revenue service taxpayer identification number of the
14 debtor.
15 d. A description of the farm products subject to the
16 security interest, the county in Iowa where the farm products
17 are produced or will be produced, the crop year unless
18 every crop of the farm product in question for the duration
19 of the effective financing statement is to be subject to
20 the particular security interest, further details of the
21 farm product subject to the security interest if needed to
22 distinguish it from other quantities of the farm product owned
23 by the same person or persons but not subject to the particular
24 security interest, and other information that the secretary
25 requires to administer this section. The effective financing
26 statement may cover more than one farm product located in more
27 than one county.

28 4. A continuation statement shall be signed by the secured
29 party, identify the original effective financing statement by
30 file number, and state that the original financing statement
31 is still effective.

32 **Sec. 8. NEW SECTION. 554E.6 Effective financing statements**
33 **— effectiveness.**

34 The following shall apply to an effective financing
35 statement:

1 1. The effective financing statement shall remain effective
2 for a period of five years from the date of filing, subject to
3 extensions for additional periods of five years each by filing
4 or refiling a continuation statement within six months before
5 the expiration of the five-year period.

6 2. Upon timely filing of a continuation statement, the
7 effectiveness of the original financing statement shall be
8 continued for five years after the last date to which the prior
9 filing was effective, whereupon it shall lapse unless another
10 continuation statement is filed prior to the lapse. Succeeding
11 continuation statements may be filed in the same manner to
12 continue the effectiveness of the original effective financing
13 statement.

14 3. The effective financing statement shall be amended in
15 writing to reflect a material change within three months of the
16 material change. The amendment shall be signed and filed as
17 required for an original effective financing statement.

18 4. The effective financing statement lapses upon the
19 expiration of the effective period of the effective financing
20 statement or is terminated upon the filing of a statement
21 signed by the secured party that the effective financing
22 statement is terminated.

23 *a.* If the effective financing statement has not lapsed or is
24 not terminated and there are no outstanding secured obligation
25 and no commitment to make advances, incur obligations, or
26 otherwise give value, the debtor may notify the secured party
27 in writing to terminate the effective financing statement.

28 *b.* Until the debtor instructs the secured party in writing
29 to terminate the effective financing statement, the secured
30 party has no obligation to terminate the effective financing
31 statement.

32 *c.* Within thirty days after receipt by the secured party
33 of the statement from the debtor to terminate the effective
34 financing statement, the secured party shall file with the
35 secretary a termination statement with respect to the effective

1 financing statement.

2 Sec. 9. NEW SECTION. 554E.7 Master list — organization and
3 contents.

4 The secretary shall compile the effective financing
5 statements into a master list subject to all of the following:

6 1. The master list shall be organized according to farm
7 products. The master list shall contain information required
8 to be contained in effective financing statements filed with
9 the secretary. The secretary shall arrange the master list for
10 each farm product as follows:

11 *a.* In alphabetical order according to the last name of the
12 individual debtors or, in the case of debtors doing business
13 other than as individuals, the first word in the name of such
14 debtors.

15 *b.* In numerical order according to the social security
16 numbers of the individual debtors or, in the case of debtors
17 doing business other than as individuals, the internal revenue
18 service taxpayer identification numbers of the debtors.

19 *c.* Geographically by county.

20 *d.* By crop year.

21 2. The master list shall include information regarding
22 buyers who register with the secretary on forms prescribed by
23 the secretary as provided in this section.

24 3. The secretary shall maintain a list of all buyers of farm
25 products who register with the secretary. A buyer registering
26 with the secretary shall complete forms requiring all of the
27 following information, as prescribed by the secretary:

28 *a.* The name and address of the buyer.

29 *b.* The interest of the buyer in receiving the list.

30 *c.* The farm products in which the buyer has an interest.

31 Sec. 10. NEW SECTION. 554E.8 Master list — distribution
32 and inquiries.

33 1. The secretary shall distribute to each registered buyer a
34 copy in written, printed, or electronic form of those portions
35 of the master list relating to farm products in which the buyer

1 has registered an interest. The secretary may provide for the
2 distribution of the master list or portions of the list on any
3 other medium requested by a registered buyer. If a registered
4 buyer so requests, the information provided to the buyer may be
5 limited to a county or group of counties where the farm product
6 is produced or to a crop year or crop years or to a combination
7 of those identifiers.

8 2. Distribution is subject to all of the following:

9 a. The distribution shall be by first class or electronic
10 mail.

11 b. The secretary shall, by rule, establish the dates upon
12 which the quarterly distributions will be made, the dates after
13 which a filing of an effective financing statement will not be
14 reflected on the next quarterly distribution of lists, and the
15 dates by which a buyer must complete a registration to receive
16 the next quarterly list.

17 3. The secretary shall remove information pertaining to
18 lapsed and terminated effective financing statements from the
19 master list prior to preparation of the lists required to be
20 distributed.

21 4. Upon written notice to the secretary by a registered
22 buyer requesting termination of the distribution of the
23 list to the registered buyer, the secretary shall terminate
24 distribution of the list to the registered buyer.

25 5. Oral and written inquiries by a buyer not registered
26 pursuant to section 554E.7 may be made to the secretary during
27 hours determined by the secretary.

28 a. The secretary may provide for a computerized system
29 for inquiry and confirmation which may be used in lieu of the
30 inquiry and confirmation system otherwise provided for in this
31 section.

32 b. Written confirmation of the information provided orally
33 in response to the inquiry shall be delivered by first class
34 mail or electronic mail to the buyer, at an address provided
35 by the buyer, by the secretary not later than the second

1 regular business day following the day on which the inquiry was
2 received.

3 6. In order to verify the existence or nonexistence of a
4 security interest, a buyer may request a seller to disclose the
5 seller's social security number or, in the case of a seller
6 doing business other than as an individual, the internal
7 revenue service taxpayer identification number of the seller.

8 Sec. 11. NEW SECTION. 554E.9 Perfection — creation of
9 superior interests.

10 1. The following shall apply:

11 a. A buyer who is engaged in farming operations and who
12 buys farm products from a seller who is also engaged in farming
13 operations shall take free of a security interest created by
14 the seller, even though the security interest is perfected and
15 the buyer knows of the existence of the security interest.

16 b. Except as provided in this section, a buyer who is
17 not engaged in farming operations and who buys farm products
18 from a seller engaged in farming operations shall take free
19 of a security interest created by the seller, even though the
20 security interest is perfected and the buyer knows of the
21 existence of the security interest.

22 2. As of the date the secretary establishes an electronic
23 central filing system as provided in section 554E.4, the
24 following shall apply:

25 a. If the buyer fails to register with the secretary prior
26 to the purchase of farm products, the buyer takes subject
27 to a security interest in the farm products only if the
28 secured party has filed an effective financing statement that
29 covers the farm products being sold, and the buyer could have
30 discovered the existence of the effective financing statement
31 prior to the purchase by accessing the database containing
32 effective financing statements filed electronically with the
33 secretary.

34 b. If the buyer registers with the secretary prior to the
35 purchase of the farm products, the buyer takes subject to a

1 security interest in the farm products only if the secured
2 party has filed an effective financing statement that covers
3 the farm products being sold, and the buyer does not secure a
4 waiver or release of the security interest as specified in the
5 effective financing statement.

6 Sec. 12. NEW SECTION. 554E.10 Fees.

7 The secretary shall establish fees for initially filing
8 effective financing statements, or a statement amending,
9 continuing, or terminating an effective financing statement.
10 The fees shall not be more than provided for filing financing
11 statements as provided in section 554.9525. Notwithstanding
12 section 22.3, the secretary may charge a buyer a fee for
13 registering to receive a master list or for receiving responses
14 to inquiries which are accessed in a printed format. The
15 secretary shall not charge a buyer a fee for registering to
16 receive a master list or for responding to buyer inquiries,
17 including by examining or printing effective financing
18 statements, and statements amending, continuing, or terminating
19 effective financing statements which are accessed in an
20 electronic format. All moneys received by the secretary under
21 this section shall be handled in the same manner as repayment
22 receipts as defined in section 8.2, and shall be used by the
23 secretary exclusively for the administration of this chapter.

24 Sec. 13. DIRECTIONS TO THE SECRETARY OF STATE.

25 Notwithstanding the date that all provisions of this Act
26 become applicable, the secretary of state shall adopt rules
27 necessary to implement this Act. If necessary to obtain
28 federal certification of the central filing system, additional
29 or alternative requirements made in conformity with 7 U.S.C. §
30 1631 may be imposed by the secretary of state by rule.

31 Sec. 14. CONTINGENT APPLICABILITY. The applicability
32 of the requirements of this Act are contingent upon federal
33 certification of a central filing system as provided in
34 this Act pursuant to 7 U.S.C. § 1631. The provisions of
35 this Act shall apply three months after the date of such

1 certification. The secretary of state shall provide notice
2 of the applicability date in the Iowa administrative bulletin
3 in three consecutive issues prior to the applicability date.
4 Until that date, persons shall take subject to or free of a
5 security interest in the same manner and according to the same
6 procedures applicable immediately prior to the applicability
7 date.

8

EXPLANATION

9 This bill creates a centralized, statewide filing system
10 for security interests in farm products. The system is
11 administered by the secretary of state, who must provide
12 for filing effective financing statements on a statewide
13 basis. The secretary of state must produce a master list
14 of information required to be contained in the effective
15 financing statements. The bill provides requirements for the
16 contents and duration of an effective financing statement.
17 The bill provides for the distribution of information by the
18 secretary of state regarding effective financing statements
19 to interested persons by sending the information to buyers
20 registered with the secretary of state. The bill provides that
21 the secretary of state must establish an electronic system for
22 filing and accessing effective financing statements and related
23 statements.

24 The bill authorizes the secretary of state to establish
25 fees for filing effective financing statements. The bill
26 authorizes the secretary of state to establish fees for
27 distributing printed versions of the master list and responding
28 to inquiries.

29 The bill provides special contingency and applicability
30 provisions. The secretary of state is required to establish
31 the centralized filing system and obtain federal certification.
32 Once the system is certified, the bill's provisions become
33 applicable three months after that date. Until that date the
34 current version of the direct notice procedures will continue
35 to apply.